

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
941 N. Capitol Street, NE, Suite 9100  
Washington, DC 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND  
REGULATORY AFFAIRS  
Petitioner

v.

YOUSSEF A. ALY  
Respondent

Case No.: CR-C-06-100026

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**ORDER GRANTING IN PART AND DENYING IN PART**  
**SUMMARY JUDGMENT**

**I. Introduction**

Currently pending before this administrative court is Respondent's Motion for Summary Adjudication, or in the alternative, Motion to Dismiss. For the following reasons, the motion for summary adjudication will be granted in part and denied in part, and an evidentiary hearing will go forward on January 30, 2007.

On June 27, 2006, Respondent filed a hearing request to appeal a Notice Revoking Vending License Number 39405851 dated March 23, 2006 (hereinafter "Notice"). The Notice alleged a violation of 24 DCMR 502.11 for vending in a zone that is not designated on Respondent's vending license; a violation of 24 DCMR 510.16 for failure to comply with the Regulation, which states that all side walk vending equipment shall be parallel to the curb within two feet of the curb face; a violation of 24 DCMR 507.1 for failure to properly and conspicuously display Respondent's certificate of authority during the operation of the vending business; a violation of 24 DCMR 508.2 for failure to carry records and receipts of sales and

purchases for the day; and a violation of 24 DCMR 513.2 for failure to refrigerate certain perishable food (the “Regulations”).

An Amended Scheduling Order was entered on December 6, 2006, giving the parties an opportunity to file dispositive motions within 30 days of the date of that Order. Also in a prior Order entered October 2, 2006, the Government was given an opportunity to amend its pleadings, which it did by filing an Amended Notice on October 20, 2006. The Amended Notice referred to Title 24, Chapter 5..

Pursuant to the Amended Scheduling Order entered on December 6, 2006, Respondent filed a timely Motion for Summary Adjudication, or in the alternative, Motion to Dismiss on January 7, 2007. The Government did not respond to the Motion for Summary Adjudication believing it was not required. (See footnote 1 of the Government’s Response to Respondent’s Memorandum of Law.) However, the Amended Scheduling Order entered December 6, 2006, clearly gave all parties a directive to file dispositive motions within 30 days of the December 6, 2006. The Motion for Summary Judgment is now ripe for review.

## **II. The Standard for Summary Judgment**

OAH Rule 2828.1 states: “Motions for summary adjudication or comparable relief may be filed in accordance with Rule 2812.”

Also, OAH Rule 2801.2 provides that where a procedural issue is not specifically addressed in the OAH Rules of Procedure, the administrative court may apply the District of Columbia Superior Court Rules of Procedure by analogy. In this case, Respondent has filed a Motion for Summary “Judgment,” and Respondent has relied upon matters that are outside the

scope of the pleadings. In support of its Motion, Respondent submitted documentary evidence. Therefore, the Motion is akin to a motion for summary judgment in a court of law or summary adjudication or decision in OAH. *See* D.C. Superior Court Rules 12-I(k) and 56.

Under Rule 56, the burden is on the moving party to show: (1) that there are no issues of material fact; and (2) that the moving party is entitled to judgment as a matter of law. *See, e.g., Sayan v. Riggs Nat'l Bank*, 544 A.2d 267 (D.C. 1988). For purposes of this Motion, the evidence is to be construed in the light most favorable to the non-moving party. *Id.*

Since I am reviewing whether to grant a summary decision in favor of Respondent I will set forth the facts established in the record, when viewing the evidence in the light most favorable to the Government. I will resolve any factual disputes and draw any reasonable inferences in favor of the Government as the nonmoving party.

### **III. Established Facts in the Record**

For purposes of the motion for summary adjudication, the record shows the following facts:

On March 24, 2006, Respondent was served a Notice Revoking Vending License Number 39405851. The Notice alleged a violation of 24 DCMR 502.11 for vending in a zone that is not designated on Respondent's vending license; a violation of 24 DCMR 510.16 for failure to comply with the Regulation, which states that all side walk vending equipment shall be parallel to the curb within two feet of the curb face; a violation of 24 DCMR 507.1 for failure to properly and conspicuously display Respondent's certificate of authority during the operation of the vending business; a violation of 24 DCMR 508.2 for failure to carry records and receipts of

sales and purchases for the day; and a violation of 24 DCMR 513.2 for failure to refrigerate certain perishable food.

On October 20, 2006, pursuant to this administrative court's scheduling order, the Government amended its Notice Revoking Vending License Number 39405851 to reflect the revised provisions to Title 24, Chapter 5 of the vending Regulations pertaining to Title 24, Chapter 5, i.e. citations to 24 DCMR 509.1(a)(2) and 24 DCMR 509.1(c) were omitted from the first Notice Revoking Vending License Number 39405851. The Amended Notice Revoking Vending License Number 39405851 also specified each day that Respondent violated the vending regulations. More specifically, the Amended Notice alleges investigations disclose that on September 19, 2005, October 3, 4, 5, 6, 2005 and December 27, 2005, January 4 and 6, 2006 Respondent violated 24 DCMR 502.11 by vending in a zone not designated on Respondent's license. The Amended Notice alleges investigations disclose that on September 19, 2005, October 3, 4, 5, 6, 2005 and December 27, 2005, January 4 and 6, 2006, Respondent violated 24 DCMR 510.16 by failing to maintain sidewalk vending equipment parallel to the curb within two feet of the curb face. The Amended Notice alleges investigations disclose that on September 19, 2005, October 3, 4, 5 and 6, 2005, Respondent violated 24 DCMR 507.1 by failing to properly and conspicuously display Respondent's certificate of authority. The Amended Notice alleges investigations disclosed that on September 19, 2005, October 3, 4, 5 and 6, 2005, Respondent violated 24 DCMR 508.2 by failing to carry for each day the record and the receipts of sales and purchases for the day, and the Amended Notice alleges investigations disclosed that on September 19, 2005, October 3, 4, 5 and 6, 2005, Respondent violated 24 DCMR 513.2 by operating a vending vehicle without a refrigerant or facilities sufficient to maintain food at a temperature of 45 degrees Fahrenheit or less under appropriate heat treatment.

This administrative court is persuaded, and I so find, that Respondent has not been found liable for violation of any provision of Title 24 as of today. Respondent has been warned verbally eight times regarding various alleged violations over a period of five months. Respondent attached to his supplemental memorandum Notices of Infractions served September 25, 2006 (Notice Nos. S700337, S700338, S700339, S700341, and S700342). The Notice of Infraction No. S700337 alleges two violations of D. C. Official Code § 47-2834 for vending without a neighborhood zone license on September 19, 2005 and again on January 4, 2006. The Notice of Infraction No. S700338 alleges a violation of D. C. Official Code § 47-2834 for vending without a neighborhood zone license on January 6, 2006. The Notice of Infraction No. S700339 also alleges two violations of D. C. Official Code § 47-2834 for vending without a neighborhood zone license on October 3 and 4, 2005. The Notice of Infraction No. S700341 alleges two more violations of D. C. Official Code § 47-2834 for vending without a neighborhood zone license on October 5 and 6, 2005. And finally, the Notice of Infraction No. S700342 alleges another single violation of D. C. Official Code § 47-2834 for vending without a neighborhood zone license on December 27, 2005.

### **III. Conclusions of Law**

The controlling Regulations are 24 DCMR 508 and 24 DCMR 509, which state in pertinent part:

- 508.1 Each vendor shall keep sufficient records of daily sales and receipts of purchases and expenses, and shall make these records available for inspection to any duly authorized representative of the District of Columbia government.
- 508.2 A vendor shall carry for each day the records and the receipts of sales and purchases for the day.
- 508.3 Failure to comply with this section shall result in immediate seizure, without notice, of the vendor's license.

508.4 A license seized pursuant to this section shall be returned by the Mayor when the vendor submits the records and the receipts required by this section.

509.1 The director shall suspend or revoke any vending license issued pursuant to this chapter, after notice, based on the following reasons:

(a) A vending license shall be revoked for any of the following violations:

- (1) Fraud, misrepresentation, or false statements contained in the application for the license;
- (2) Fraud, misrepresentation, or false statements made in connection with the selling of any article, merchandise, or food;
- (3) Violation of any provision of the criminal code of the District of Columbia that was committed in connection with the operation of the vending business, including but not limited to the possession or sale of counterfeit merchandise; or
- (4) Fifteen (15) or more violations of provisions enumerated in paragraph (b) of this subsection.

(b) A vending license shall be suspended for a period of no less than five (5) and no more than ten (10) days for any of the following:

- (1) If a vendor is found guilty of twelve (12) or more violations, during any twelve (12) month period, of § 510, § 511, § 512, § 514, §§ 521 through 523, § 526, or § 528 of this chapter; or
- (2) If a vendor is found guilty of violating § 513, § 515, § 526, or § 529 of this chapter, or the parking restriction regulations under the District of Columbia Traffic Act, 1925, or approved March 3, 1925 (43 Stat. 1119; D.C. Code 40-701 et seq.)

As stated above, the burden is on the moving party to show: (1) that there are no issues of material fact; and (2) that the moving party is entitled to judgment as a matter of law. *See, e.g., Sayan v. Riggs Nat'l Bank*, 544 A.2d 267 (D.C. 1988). For purposes of this Motion, the evidence is to be construed in the light most favorable to the non-moving party. *Id.*

Respondent's unopposed motion for summary judgment and supporting exhibits construed in a light most favorable to the Government as the non-moving party, establishes that as of today, the Notices of Infractions served September 25, 2006 (Notice Nos. S700337, S700338, S700339, S700341, and S700342), have not been adjudicated, and therefore, the

Respondent has not been found liable for violation of any provision of Title 24 as of today. Therefore, Respondent is entitled to summary judgment as a matter of law on the charges involving §§ 502.11, 510.16, 507.1, and 513.2 because pursuant to 24 DCMR 509, the Respondent has not been found guilty or liable more than 12 times for any of the charges alleged in the Amended Notice of Revocation.

In his motion for summary adjudication, Respondent first contends that the grounds for revoking his vending license were changed ex post facto. This argument is misplaced. The Amended Notice of Revocation merely adds the cite 24 DCMR 509, as it pertains to the controlling Regulation, which was not cited in the original Notice of Revocation. Respondent is correct that there have been no amendments to 24 DCMR 509 since March 6, 1998 45 DCR 1172 by D.C. Act 12-256.

Respondent secondly contends that DCRA failed to provide proper notice before revoking his vending license. We disagree. The precise language in the Notice of Revocation indicates that the Respondent's license was not seized until there was a violation of 24 DCMR 508, which is a ground for immediate seizure without notice.

Finally, Respondent argues that the punishment he has already suffered exceeds the appropriate, commensurate penalties for the alleged civil infractions that have yet to be proven in this matter. We also reject this argument. Since 24 DCMR 508 does allow the government to immediately seize one's license, without notice, the removal of Respondent's license for failure to provide adequate sales receipts and purchases was justified.

The motion for summary adjudication is denied as it pertains to revoking the license for a violation of 24 DCMR 508.2. The plain language of the Regulation clearly indicates that failure

to provide records and the receipts of sales and purchases is grounds for immediate seizure without notice. Since neither party raised the issue of the propriety of the license revocation under 24 DCMR 508.2 in the motion for summary adjudication, the following Order is issued.

**IV. Order**

Therefore, it is this 24<sup>th</sup> day of January, 2007:

**ORDERED**, that Respondent's Motion for Summary Judgment is **GRANTED** as it pertains to any allegations involving 24 DCMR §§ 502.11, 510.16, 507.1, and 513.2; and it is further

**ORDERED**, that Respondent's Motion for Summary Judgment is **DENIED** as it pertains to any allegation involving 24 DCMR 508; and it is further.

**ORDERED**, that all parties shall prepare for the hearing on January 30, 2007.

January 24, 2007

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Claudia Barber  
Administrative Law Judge